

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 454

FINAL READING

Introduced by Combs, 32; Aguilar, 35; Baker, 44; Cornett, 45; Cudaback, 36; Cunningham, 40; Erdman, 47; Fischer, 43; Flood, 19; Friend, 10; Hudkins, 21; Janssen, 15; Jensen, 20; Kremer, 34; Langemeier, 23; McDonald, 41; Pahls, 31; Dw. Pedersen, 39; Redfield, 12; Schrock, 38; Smith, 48; Stuhr, 24; Wehrbein, 2; Engel, 17; Connealy, 16

Read first time January 13, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to handguns; to amend section 28-1202, Reissue
2 Revised Statutes of Nebraska; to adopt the Concealed
3 Handgun Permit Act; to provide penalties; to harmonize
4 provisions; to provide an operative date; to provide
5 severability; and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 21 of this act shall be known
2 and may be cited as the Concealed Handgun Permit Act.

3 Sec. 2. An individual may obtain a permit to carry a
4 concealed handgun in accordance with the Concealed Handgun Permit
5 Act.

6 Sec. 3. For purposes of the Concealed Handgun Permit Act:

7 (1) Concealed handgun means the handgun is totally hidden
8 from view. If any part of the handgun is capable of being seen, it
9 is not a concealed handgun;

10 (2) Emergency services personnel means a volunteer or
11 paid firefighter or rescue squad member or a person certified
12 to provide emergency medical services pursuant to the Emergency
13 Medical Services Act;

14 (3) Handgun means any firearm with a barrel less than
15 sixteen inches in length or any firearm designed to be held and
16 fired by the use of a single hand;

17 (4) Peace officer means any town marshal, chief of
18 police or local police officer, sheriff or deputy sheriff, the
19 Superintendent of Law Enforcement and Public Safety, any officer
20 of the Nebraska State Patrol, any member of the National Guard
21 on active service by direction of the Governor during periods
22 of emergency or civil disorder, any Game and Parks Commission
23 conservation officer, and all other persons with similar authority
24 to make arrests;

25 (5) Permitholder means an individual holding a current

1 and valid permit to carry a concealed handgun issued pursuant to
2 the Concealed Handgun Permit Act; and

3 (6) Proof of training means an original document or
4 certified copy of a document, supplied by an applicant, that
5 certifies that he or she either:

6 (a) Within the previous three years, has successfully
7 completed a handgun training and safety course approved by the
8 Nebraska State Patrol pursuant to section 6 of this act; or

9 (b) Is a member of the active or reserve armed forces of
10 the United States or a member of the National Guard and has had
11 handgun training within the previous three years which meets the
12 minimum safety and training requirements of section 6 of this act.

13 Sec. 4. (1) Application for a permit to carry a concealed
14 handgun shall be made in person at any Nebraska State Patrol
15 Troop Headquarters or office provided by the patrol for purposes
16 of accepting such an application. The applicant shall present a
17 current Nebraska motor vehicle operator's license, Nebraska-issued
18 state identification card, or military identification card and
19 shall submit two legible sets of fingerprints for a criminal
20 history record information check pursuant to section 5 of
21 this act. The application shall be made on a form prescribed
22 by the Superintendent of Law Enforcement and Public Safety.
23 The application shall state the applicant's full name, social
24 security number, motor vehicle operator's license number or
25 state identification card number, address, and date of birth and

1 contain the applicant's signature and shall include space for the
2 applicant to affirm that he or she meets each and every one of
3 the requirements set forth in section 7 of this act. The applicant
4 shall attach to the application proof of training and proof of
5 vision as required in subdivision (3) of section 7 of this act.

6 (2) A person applying for a permit to carry a concealed
7 handgun who gives false information or offers false evidence of his
8 or her identity is guilty of a Class IV felony.

9 (3) The permit to carry a concealed handgun shall be
10 issued by the Nebraska State Patrol within five business days after
11 completion of the applicant's criminal history record information
12 check, if the applicant has complied with this section and has met
13 all the requirements of section 7 of this act.

14 (4) An applicant denied a permit to carry a concealed
15 handgun may appeal to the district court of the judicial district
16 of the county in which he or she resides or the county in which
17 he or she applied for the permit pursuant to the Administrative
18 Procedure Act.

19 Sec. 5. In order to insure an applicant's initial
20 compliance with sections 4 and 7 of this act, the applicant
21 for a permit to carry a concealed handgun shall be fingerprinted by
22 the Nebraska State Patrol and a check made of his or her criminal
23 history record information maintained by the Federal Bureau of
24 Investigation through the Nebraska State Patrol. The criminal
25 history record information check under the Concealed Handgun Permit

1 Act is for initial compliance only.

2 Sec. 6. (1) The Nebraska State Patrol shall prepare and
3 publish minimum training and safety requirements for and adopt and
4 promulgate rules and regulations governing handgun training and
5 safety courses and handgun training and safety course instructors.
6 Minimum safety and training requirements for a handgun training and
7 safety course shall include, but not be limited to:

8 (a) Knowledge and safe handling of a handgun;

9 (b) Knowledge and safe handling of handgun ammunition;

10 (c) Safe handgun shooting fundamentals;

11 (d) A demonstration of competency with a handgun with
12 respect to the minimum safety and training requirements;

13 (e) Knowledge of federal, state, and local laws
14 pertaining to the purchase, ownership, transportation, and
15 possession of handguns;

16 (f) Knowledge of federal, state, and local laws
17 pertaining to the use of a handgun, including, but not limited to,
18 use of a handgun for self-defense and laws relating to justifiable
19 homicide and the various degrees of assault;

20 (g) Knowledge of ways to avoid a criminal attack and to
21 defuse or control a violent confrontation; and

22 (h) Knowledge of proper storage practices for handguns
23 and ammunition, including storage practices which would reduce the
24 possibility of accidental injury to a child.

25 (2) A person or entity conducting a handgun training

1 and safety course and the course instructors shall be approved by
2 the patrol before operation. The patrol shall issue a certificate
3 evidencing its approval.

4 (3) A certificate of completion of a handgun training
5 and safety course shall be issued by the person or entity
6 conducting a handgun training and safety course to persons
7 successfully completing the course. The certificate of completion
8 shall also include certification from the instructor that the
9 person completing the course does not suffer from a readily
10 discernible physical infirmity that prevents the person from safely
11 handling a handgun.

12 (4) Any fee for participation in a handgun training and
13 safety course is the responsibility of the applicant.

14 Sec. 7. An applicant shall:

15 (1) Be at least twenty-one years of age;

16 (2) Not be prohibited from purchasing or possessing a
17 handgun by 18 U.S.C. 922, as such section existed on January 1,
18 2005;

19 (3) Possess the same powers of eyesight as required under
20 section 60-4,118 for a Class O operator's license. If an applicant
21 does not possess a current Nebraska motor vehicle operator's
22 license, the applicant may present a current optometrist's or
23 ophthalmologist's statement certifying the vision reading obtained
24 when testing the applicant. If such certified vision reading meets
25 the vision requirements prescribed by section 60-4,118 for a Class

1 O operator's license, the vision requirements of this subdivision
2 shall have been met;

3 (4) Not have pled guilty to, not have pled nolo
4 contendere to, or not have been convicted of a felony or a
5 crime of violence under the laws of this state or under the laws of
6 any other jurisdiction;

7 (5) Not have been found in the previous ten years to be a
8 mentally ill and dangerous person under the Nebraska Mental Health
9 Commitment Act or a similar law of another jurisdiction or not be
10 currently adjudged mentally incompetent;

11 (6) Have been a resident of this state for at least one
12 hundred eighty days. For purposes of this section, resident does
13 not include an applicant who maintains a residence in another state
14 and claims that residence for voting or tax purposes;

15 (7) Have had no violations of any law of this state
16 relating to firearms, unlawful use of a weapon, or controlled
17 substances or of any similar laws of another jurisdiction in the
18 ten years preceding the date of application;

19 (8) Not be on parole, probation, house arrest, or work
20 release;

21 (9) Be a citizen of the United States; and

22 (10) Provide proof of training.

23 Sec. 8. The design and form of the permit to carry a
24 concealed handgun shall be prescribed by the Nebraska State Patrol.
25 The permit shall list the permitholder's name, the permitholder's

1 address, and the expiration date of the permit and contain a
2 photograph of the permitholder.

3 Sec. 9. A permitholder shall continue to meet the
4 requirements of section 7 of this act during the time he or
5 she holds the permit. If, during such time, a permitholder does not
6 continue to meet one or more of the requirements, the permitholder
7 shall return his or her permit to the Nebraska State Patrol for
8 revocation. If a permitholder does not return his or her permit,
9 the permitholder is subject to having his or her permit revoked
10 under section 13 of this act.

11 Sec. 10. (1) A permit to carry a concealed handgun is
12 valid throughout the state for a period of five years after the
13 date of issuance. The fee for issuing a permit is one hundred
14 dollars.

15 (2) The Nebraska State Patrol shall renew a person's
16 permit to carry a concealed handgun for a renewal period of five
17 years, subject to continuing compliance with the requirements of
18 section 7 of this act. The renewal fee is fifty dollars, and
19 renewal may be applied for up to four months before expiration of a
20 permit to carry a concealed handgun.

21 (3) The applicant shall submit the fee with the
22 application to the Nebraska State Patrol. The fee shall be remitted
23 to the State Treasurer for credit to the Public Safety Cash Fund.

24 Sec. 11. A permit to carry a concealed handgun shall be
25 issued to a specific individual only and shall not be transferred

1 from one person to another.

2 Sec. 12. The Nebraska State Patrol or any agent,
3 employee, or member thereof is not civilly liable to any injured
4 person or his or her estate for any injury suffered, including any
5 action for wrongful death or property damage suffered, relating to
6 the issuance or revocation of a permit to carry a concealed handgun
7 issued pursuant to the Concealed Handgun Permit Act.

8 Sec. 13. (1) Any peace officer having probable cause
9 to believe that a permitholder is no longer in compliance with
10 one or more requirements of section 7 of this act shall bring
11 an application for revocation of the permit to be prosecuted as
12 provided in subsection (2) of this section.

13 (2) It is the duty of the county attorney or his or
14 her deputy of the county in which such permitholder resides
15 to prosecute a case for the revocation of a permit to carry
16 a concealed handgun brought pursuant to subsection (1) of this
17 section. In case the county attorney refuses or is unable to
18 prosecute the case, the duty to prosecute shall be upon the
19 Attorney General or his or her assistant.

20 (3) The case shall be prosecuted as a civil case, and the
21 permit shall be revoked upon a showing by a preponderance of the
22 evidence that the permitholder does not meet one or more of the
23 requirements of section 7 of this act.

24 (4) A person who has his or her permit revoked under
25 this section may be fined up to one thousand dollars and shall

1 be charged with the costs of the prosecution. The money collected
2 under this subsection as an administrative fine shall be remitted
3 to the State Treasurer for distribution in accordance with Article
4 VII, section 5, of the Constitution of Nebraska.

5 Sec. 14. (1) A permitholder shall carry his or her
6 permit to carry a concealed handgun and his or her Nebraska
7 driver's license, Nebraska-issued state identification card, or
8 military identification card any time he or she carries a concealed
9 handgun. The permitholder shall display both the permit to carry a
10 concealed handgun and his or her Nebraska motor vehicle operator's
11 license, Nebraska-issued state identification card, or military
12 identification card when asked to do so by a peace officer or by
13 emergency services personnel.

14 (2) Whenever a permitholder who is carrying a concealed
15 handgun is contacted by a peace officer or by emergency services
16 personnel, the permitholder shall immediately inform the peace
17 officer or emergency services personnel that the permitholder is
18 carrying a concealed handgun.

19 (3)(a) During contact with a permitholder, a peace
20 officer or emergency services personnel may secure the handgun
21 or direct that it be secured during the duration of the contact if
22 the peace officer or emergency services personnel determines that
23 it is necessary for the safety of any person present, including
24 the peace officer or emergency services personnel. The permitholder
25 shall submit to the order to secure the handgun.

1 (b)(i) When the peace officer has determined that the
2 permitholder is not a threat to the safety of any person present,
3 including the peace officer, and the permitholder has not committed
4 any other violation that would result in his or her arrest or the
5 suspension or revocation of his or her permit, the peace officer
6 shall return the handgun to the permitholder before releasing the
7 permitholder from the scene and breaking contact.

8 (ii) When emergency services personnel have determined
9 that the permitholder is not a threat to the safety of any
10 person present, including emergency services personnel, and if the
11 permitholder is physically and mentally capable of possessing the
12 handgun, the emergency services personnel shall return the handgun
13 to the permitholder before releasing the permitholder from the
14 scene and breaking contact. If the permitholder is transported for
15 treatment to another location, the handgun shall be turned over
16 to any peace officer. The peace officer shall provide a receipt
17 which includes the make, model, caliber, and serial number of the
18 handgun.

19 (4) For purposes of this section, contact with a peace
20 officer means any time a peace officer personally stops, detains,
21 questions, or addresses a permitholder for an official purpose or
22 in the course of his or her official duties, and contact with
23 emergency services personnel means any time emergency services
24 personnel provide treatment to a permitholder in the course of
25 their official duties.

1 Sec. 15. (1)(a) A permitholder may carry a concealed
2 handgun anywhere in Nebraska, except any: Police, sheriff, or
3 Nebraska State Patrol station or office; detention facility,
4 prison, or jail; courtroom or building which contains a courtroom;
5 polling place during a bona fide election; meeting of the governing
6 body of a county, public school district, municipality, or
7 other political subdivision; meeting of the Legislature or a
8 committee of the Legislature; financial institution; professional,
9 semiprofessional, or collegiate athletic event; school, school
10 grounds, school-owned vehicle, or school-sponsored activity or
11 athletic event; place of worship; emergency room or trauma center;
12 political rally or fundraiser; establishment having a license
13 issued under the Nebraska Liquor Control Act that derives over
14 one-half of its total income from the sale of alcoholic liquor;
15 place where the possession or carrying of a firearm is prohibited
16 by state or federal law; a place or premises where the person,
17 persons, entity, or entities in control of the property or employer
18 in control of the property has prohibited permitholders from
19 carrying concealed handguns into or onto the place or premises;
20 or into or onto any other place or premises where handguns are
21 prohibited by law or rule or regulation.

22 (b) A financial institution may authorize its security
23 personnel to carry concealed handguns in the financial institution
24 while on duty so long as each member of the security personnel, as
25 authorized, is in compliance with the Concealed Handgun Permit Act

1 and possesses a permit to carry a concealed handgun issued pursuant
2 to the act.

3 (2) If a person, persons, entity, or entities in control
4 of the property or an employer in control of the property prohibits
5 a permitholder from carrying a concealed handgun into or onto the
6 place or premises and such place or premises are open to the
7 public, a permitholder does not violate this section unless the
8 person, persons, entity, or entities in control of the property
9 or employer in control of the property has posted conspicuous
10 notice that carrying a concealed handgun is prohibited in or
11 on the place or premises or has made a request, directly or
12 through an authorized representative or management personnel, that
13 the permitholder remove the concealed handgun from the place or
14 premises. A permitholder carrying a concealed handgun in a vehicle
15 into or onto any place or premises does not violate this section
16 so long as the handgun is not removed from the vehicle while the
17 vehicle is in or on the place or premises. An employer may prohibit
18 employees or other persons who are permitholders from carrying
19 concealed handguns in vehicles owned by the employer.

20 (3) A permitholder shall not carry a concealed handgun
21 while he or she is consuming alcohol or while the permitholder
22 has remaining in his or her blood, urine, or breath any previously
23 consumed alcohol or any controlled substance as defined in section
24 28-401. A permitholder does not violate this subsection if the
25 controlled substance in his or her blood, urine, or breath was

1 lawfully obtained and was taken in therapeutically prescribed
2 amounts.

3 Sec. 16. Any time the discharge of a handgun carried by
4 a permitholder pursuant to the Concealed Handgun Permit Act results
5 in injury to a person or damage to property, the permitholder shall
6 make a report of such incident to the Nebraska State Patrol on a
7 form designed and distributed by the Nebraska State Patrol. The
8 information from the report shall be maintained as provided in
9 section 18 of this act.

10 Sec. 17. (1) A permitholder who violates subsection (1)
11 or (2) of section 14 of this act or section 15 or 16 of this act
12 is guilty of a Class III misdemeanor for the first violation and a
13 Class I misdemeanor for any second or subsequent violation.

14 (2) A permitholder who violates subsection (3) of section
15 14 of this act is guilty of a Class I misdemeanor.

16 (3) A permitholder who violates this section shall also
17 be subject to revocation of his or her permit under section 13 of
18 this act.

19 Sec. 18. The Nebraska State Patrol shall maintain a
20 listing of all applicants and permitholders and any pertinent
21 information regarding such applicants and permitholders. The
22 information shall be available upon request to all federal, state,
23 and local law enforcement agencies. Information relating to an
24 applicant or to a permitholder received or maintained pursuant to
25 the Concealed Handgun Permit Act by the Nebraska State Patrol or

1 any other law enforcement agency is confidential and shall not be
2 considered a public record within the meaning of sections 84-712
3 to 84-712.09.

4 Sec. 19. Nothing in the Concealed Handgun Permit Act
5 prevents a person from carrying a concealed weapon as permitted
6 under section 28-1202.

7 Sec. 20. The Nebraska State Patrol may adopt and
8 promulgate rules and regulations to carry out the Concealed Handgun
9 Permit Act.

10 Sec. 21. (1) The Department of Motor Vehicles shall
11 modify the existing system of the department to allow the status
12 of a permit to carry a concealed handgun and the dates of issuance
13 and expiration of such permit to be recorded on the permitholder's
14 record provided for in section 60-483. The Nebraska State Patrol
15 shall use the system to record the issuance or renewal of a permit
16 to carry a concealed handgun. The transmission of notice of the
17 issuance or renewal of such permit shall include the applicant's
18 name, the applicant's motor vehicle operator's license number or
19 state identification card number, and the dates of issuance and
20 expiration of the permit to carry a concealed handgun.

21 (2) An abstract of a court record of every case in
22 which a person's permit to carry a concealed handgun is revoked
23 shall be transmitted to the Department of Motor Vehicles using the
24 abstracting system provided for in section 60-497.01. Such abstract
25 shall contain the name of the revoked permitholder, his or her

1 motor vehicle operator's license number or state identification
2 card number, and the date of revocation of the permit to carry a
3 concealed handgun.

4 Sec. 22. Section 28-1202, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-1202 (1) (a) Except as otherwise provided in ~~subsection~~
7 ~~(2)~~ of this section, any person who carries a weapon or weapons
8 concealed on or about his or her person such as a revolver, pistol,
9 bowie knife, dirk or knife with a dirk blade attachment, brass or
10 iron knuckles, or any other deadly weapon commits the offense of
11 carrying a concealed weapon.

12 ~~(2)~~ (b) It ~~shall be~~ is an affirmative defense that
13 the defendant was engaged in any lawful business, calling, or
14 employment at the time he or she was carrying any weapon or weapons
15 and the circumstances in which such person was placed at the time
16 were such as to justify a prudent person in carrying the weapon or
17 weapons for the defense of his or her person, property, or family.

18 (2) This section does not apply to a person who is the
19 holder of a valid permit issued under the Concealed Handgun Permit
20 Act if the concealed weapon the defendant is carrying is a handgun
21 as defined in section 3 of this act.

22 (3) Carrying a concealed weapon is a Class I misdemeanor.

23 (4) In the case of a second or subsequent conviction
24 under this section, carrying a concealed weapon is a Class IV
25 felony.

1 Sec. 23. This act becomes operative on January 1, 2007.

2 Sec. 24. If any section in this act or any part of any
3 section is declared invalid or unconstitutional, the declaration
4 shall not affect the validity or constitutionality of the remaining
5 portions.

6 Sec. 25. Original section 28-1202, Reissue Revised
7 Statutes of Nebraska, is repealed.